

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE

**WRIT PETITION NO 195 OF 1998**

Shri Ramesh Ramgopal Daga  
Occupation-business,  
R/o Khandare Bhuwan,  
366/67, Ground Floor,  
Block No.2, Raviwar Peth,  
Nasik.

..Petitioner  
Orig.deft.-  
Tenant.

Vs.

Shri Vasant Baburao Khandare  
Occupation-business.  
Resident of Khandare Bhuwan,  
Raviwar Peth, Nasik.

..Respondent  
Orig.Plff.-  
Landlord.

Mr. S.M. Gorwadkar for the petitioner.  
Mr. P.N. Joshi for the respondent.

**CORAM : ANOOP V.MOHTA J.**

**DATE : 5TH AUGUST, 2005.**

**ORAL JUDGMENT**

. The petitioner tenant has invoked Article 227 of the Constitution of India and sought to challenge the reversal order passed by the Additional District Judge, Nashik, (appellate Court), whereby the respondent-landlord's appeal has been allowed and the order of dismissal of the suit was set aside, resultantly, the respondent-landlord's suit has been

decreed, basically on the ground of default. Therefore, the present writ petition.

2. The tenant and landlord's relationship was the basic cause of action for filing the suit for eviction, after issuing demand notice, as contemplated under the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (for short Bombay Rent Act). There is no dispute in the present case, that the demand notice was issued and received by the petitioner-tenant. There was no dispute raised immediately within 30 days and or no application of any kind was filed within the said period. That resulted into filing of suit before the learned Civil Judge, S.D., Nashik (trial Court). The parties led evidence, after resisting the said suit. The learned Judge by order dated 28/4/1992, dismissed the suit. It is the appellate Court, by the impugned judgment and order, granted the decree for possession by reversing the finding. Heard the learned Counsel appearing for the parties.

3. Since 1962-63 the petitioner along with his other brothers residing in the suit premises, claiming to be the joint Hindu Family, as tenants. The receipts,

in fact, as pointed out by the Counsel appearing for the respondents, during all this period were in the name of the petitioner. Therefore, the petitioner has been recognised, as tenant of the premises in question. The said monthly tenancy at the rate Rs. 30/- remained undisturbed, unchallenged even after the issuance of demand notice in question. No objection of any kind has been raised by any other brothers, who said to be the Karta of the Joint Hindu Family in question.

4. The learned Counsel appearing for the petitioner, however, strongly relied on the admissions given in the evidence that "Ramnath is the Karta, therefore, the receipts stands in his name". The whole submission therefore, is that the Ramnath has been recognised as a tenant. Therefore, issuance of notice only to Ramesh by the respondent landlord goes to the root of the matter and therefore, on this ground also the decree, as such unexecutable. The submission therefore, that basically all the brothers who are occupying the premises in question should have been joined as a party. As noted above, in view of the above undisputed position on the record, I am not inclined to accept the submission, as raised by the learned Counsel

appearing for the petitioner.

5. There is nothing to suggest or borne out from the record that the tenancy was joint tenancy. At no point of time, the landlord has recognised all the occupants, that is the brothers of the petitioner, as a joint tenant of the premises in question. In absence of of this background it is difficult to accept the contention as raised above.

6. The trial Court was swayed away with the evidence on the record that after receipt of the notice, the wife of the respondent had tried to tender the rent, which was refused. Therefore, the tenant never neglected to pay the rent. There was always intention to deposit the rent. There is no dispute that the wife of petitioner-Ramesh, tried to tender the rent but the same was refused and therefore, the trial Court accepted and held the same as compliance of the Bombay Rent Act and refused to grant the decree for possession.

7. The appellate Court however, reversed the same by observing as;

"The notice was received by the defendant on

18/4/1985. The plaint was presented on 10/12/1985. On 19/9/1986, summons was served upon the defendant. On 22/10/1986, defendant appeared in the Court. Then few adjournments were sought to file written statement. On 17/7/1987, written statement was filed. On 16/6/1987 (Exh.13) for the first time, rent of Rs. 1500/- was paid. What emerged from the aforesaid facts is that for the first time after receipt of the notice (dated 18/4/1985) rent was paid on 16/6/1987, which was for 30 months. What is important to note is that even after receipt of summons on 19/9/1987, no immediate payment of the rent was made."

The above observed reasoning given by the appellate Court appears within the frame work of record and taking into consideration the mandate of the law, as observed by the Apex Court in **(Jaywant S. Kulkarni and others V. Minochar Dosabhai Shroff and others) 1988 Mah. L.J. 828**, where the Apex Court has after considering the scheme of Bombay Rent Act observed;

"Our attention was drawn to a decision of this Court in Mohan Laxman Hede vs. Noormohamed Adam Shaikh 1988 11 SVLR (C) 22 = AIR 1988 SC 1111. Where this Court reiterated that to take advantage of protection from eviction under section 12(3)(b) of the Act, it cannot be said that exact or mathematical punctuality was required in the deposit of rent by a tenant. The tenant had been depositing the rents in that case in court for two or three months at a time. There the court was concerned with the expression "regularly" as contemplated in clause (b) of sub-section (3) of Section 12 of the Act. It was not concerned with clause (a) of

sub-section (3) of Section 12 of the Act, it was not concerned with the question of total failure or neglect on the part of the tenant to pay the rent. It may be instructive in this connection to note that in sub-section (3)(a). the expression, "Court shall pass a decree" was substituted for the words "Court may pass a decree" by an amendment passed in 1963, making it mandatory to pass the decree. When the Legislature had made its intention clear in specific terms, there was no scope for Shri Bhasme's appeal to "the spirit of law" and not to the strict letter of the law."

8. In view of this uncontravorted mandate of the Bombay Rent Act, and in the facts and circumstances of the case, the decree as granted by the appellate Court should follow.

9. The learned Counsel appearing for the petitioner has strongly relied on AIR 1990 S.C. 205 (Textile Association Bombay V. Gupta) and submitted that such decree without joining all the occupants tenants as a party, should fail. In that case *exparte* was challenged. Section 13 of the Bombay Rent Act, was taken note of by the Apex Court. The facts are distinct and distinguishable. We are concerned with the provisions of section 12(a) of the Bombay Rent Act. The Apex Court's decision therefore, is also not helpful to the petitioner to support his case. In the present

case, as referred above and as borne out from the record that the petitioner has been recognised as a tenant, in such cases, there is no question of considering the case of other relatives as a tenant or joint tenant. The landlord is no way concerned with the other occupants, specially when he has recognised Ramesh as his tenant. The notice therefore accordingly issued in the name of Ramesh, which was duly received and acted upon. Even though, as per the case of the petitioner tenant himself, not the Ramnath, but the wife of Ramesh tried to pay the rent within 30 days. Therefore, all the time parties acted upon the relationship of the landlord and the tenant. This background also distinguishes the Apex Court's decision (Texitle) and also supports the case of the landlord-respondent.

10. Taking in to account the above observations, including the reasoning given by the appellate Court, I am inclined to dismiss the present writ petition filed by the petitioner-tenant. The petition is accordingly dismissed. The stay also stands vacated. However, at the request of the petitioner and considering the facts and circumstances of the case, I am inclined to grant

one year's time to vacate the premises on a condition of filing an usual undertaking by the petitioner, as well as, all other occupants of the premises, within 15 days, failing which the landlord is free to execute the decree. No order as to cost.

[ANOOPI V. MOHTA, J.]